States courts or in the Supreme Court. There might be good reason for exempting from service of process an attorney of another county casually here and admitted to practice for a special case. But there is no more real necessity or propriety for exempting our own attorneys from service of process—except in presence of the court—than for exempting a merchant who is engaged in purchasing goods, or a bank officer during the banking hours." The case was of an attorney regularly admitted to practice in the court which he was attending when served, who happened to reside in another county.

As to an attorney's exemption from arrest on civil process while engaged in attendance upon the court, there is no doubt about the common law rule. In *Wheeler's Case* (1750), 1 Wilson's Rep. 298, an attorney was arrested by a *latitat*, and it was held by the whole court that it was a motion of course to discharge him out of custody on filing common bail. In TIDD'S PRACTICE vol. 1, p. 193, it is stated that "attorneys and other officers, on account of the supposed necessity of their attendance, in order to transact the business of the courts, are generally speaking, privileged from arrest." So in *Humphrey* v. *Cumming*, 5 Wind. 90, it was held that the defendant was properly discharged from arrest upon its being shown that he was an attorney actually attending court for the purpose of making a motion, and that his personal attendance was deemed necessary to the interest of his client. And in the much earlier case of *Commonwealth* v. *Ronald*, 4 Call, 97, the Court of Appeals of Virginia held that "there is no point more clear. Parties attending their suits are privileged; so are their attorneys and witnesses: and so the judges must be. . . . The privilege is part of the common law of England which we have adopted." In *Elam* v. *Lewis*, 19 Ga. 608, Justice LUMPKIN points out very clearly and forcibly the differences in the position of attorneys in England and in the United States, and concludes that no reason for privilege from arrest exists in this country, although he says: "That by the common law, attorneys are privileged from arrest, either on *mesne* or final process, there can be no doubt." The extent of the privilege from arrest is now largely regulated by statute.

LAW GOVERNING THE VALIDITY OF A NOTE EXECUTED AND DELIVERED IN ONE STATE, BUT PAYABLE IN ANOTHER.—The Supreme Court of Wisconsin has recently decided a case of more than ordinary interest. A real estate agent living in Massachusetts and his principal, who resided in Wisconsin, met in the city of New York relative to a sale of land owned by the principal and situated in Florida. Certain promissory notes were made in favor of the agent, such notes being executed and delivered on Sunday and made payable in Massachusetts. *Brown* v. *Gates* (1904), 97 N. W. Rep. 221, 98 N. W. Rep. 205.

In an action on these notes the question was squarely presented as to whether the law of the place of the execution and delivery or that of the fixed place of performance should govern in determining the validity of the notes. In deciding that Massachusetts was the *place* of the contract, and that therefore the statute of that state making void all executory contracts made on Sunday applied to the notes, the Court said: "When a contract is made in one state

or country, to be performed in another state or country, it is to be regulated in respect to its nature, validity, interpretation and effect, by the laws of the place of performance, unless it clearly appears that the parties intended the contract to be governed by the law of the place where it was made." The court cites a number of cases and the following authorities: STORY'S CONFLICT OF LAWS, §§ 278a, 280; DANIEL ON NEGOTIABLE INSTRUMENTS, § 865. WOOD'S BYLES ON BILLS AND NOTES, p. 570. None of the cases cited is directly in point, and it is probable that few, if any, such can be found. But the general rule as quoted has been laid down in a large number of cases. *Andrews* v. *Pond*, 13 Peters 65, *London Assurance* v. *Companhia*, 167 U. S. 149, 160, *Beggs* v. *Bartels*, 73 Conn. 132, 46 Atl. 874. The same rule is laid down, with perhaps some qualification, by Mr. Dicey in his CONFLICT OF LAWS, pp. 570, 571. But the cases cited by these authorities do not sustain the broad doctrine asserted. In almost every instance the question is one of performance, or of both the making and the performance. The principle underlying this rule is based upon the presumption that the parties intended that the law of the stipulated place of performance should govern the validity of the contract, and thus became bound by that law. But such a presumption in this case is obviously absurd. The parties certainly could not be presumed to have intended to incorporate a foreign law which would invalidate their contract. What they did intend was that the payment should be made in Massachusetts, and nothing more. In *Scudder* v. *Union Nat'l Bank*, 91 U.S. 406, the following rule is given:—"Matters bearing upon the execution, interpretation, and validity of a contract are determined by the law of the place where it is made. Matters connected with its performance are regulated by the law prevailing at the place of performance." The same rules are laid down by Mr. Minor in his CONFLICT OF LAWS, § 155. According to this author the place of making the contract, or the *locus celebrationis*, is the place where the contract becomes binding upon the parties. At § 157 he says: "A contract is not 'made' until it becomes binding upon the promisor. As soon as the final act is done . . . . the promisor becomes irretrievably bound and the contract is *made*. The situs of the final act necessary to bind the promisor is the locus celebrationis of the contract." In discussing the place of performance, or the *locus solutionis*, and the intention of the parties in regard thereto, the same learned author says:—"It is to be observed that such circumstances (intentions as to place of performance) do not affect the locus celebrationis of the contract. The parties have their choice before entering into their contract, as to the state where they shall make it; but once entered into, their choice is irrevocably laid upon the state where, as a matter of fact, the contract is made. The parties, when they have entered into a contract in one state, cannot, merely by intending to do so, make it a contract entered into in another." Note 4, p. 378. According to these rules it seems clear that the notes in the principal case, having been made and delivered in New York, should be governed by its laws. Performance, the mere payment of the money, is to take place in Massachusetts. Since the making of the contract was valid in New York and would have been enforceable there, and since its performance was not against the public policy, or the morals of Massachusetts, it is submitted that the notes should have been held valid. But perhaps a stronger

reason for holding these notes valid, and the reason underlying the rules given by Mr. Minor, above quoted, is found in the fact that the laws of a state can have no extraterritorial force, no matter what is the intention of the parties. It seems difficult to understand how the law of Massachusetts could thus have been incorporated into the contract fully made and delivered in New York by the mere mention of the place of payment. 13 HARV. LAW REV., 296; 10 HARV. LAW REV., 168.